

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

Paper No. 19

UNITED STATES PATENT AND TRADEMARK OFFICE

MAILED

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

AUG 29 2002

Ex parte BRUCE TOGNAZZINI

PAT. & T.M. OFFICE
BOARD OF PATENT APPEALS
AND INTERFERENCES

Appeal No. 1999-2841
Application No. 08/655,133

ON BRIEF¹

Before KRASS, DIXON, and BLANKENSHIP, Administrative Patent Judges.

BLANKENSHIP, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134 from the examiner's final rejection of claims 1-10 and 12-26, which are all the claims remaining in the application.

We affirm-in-part.

¹ Appellant waived oral hearing by facsimile communication filed Oct. 5, 2001 (Paper No. 18).

BACKGROUND

The invention is related to radio or radiotelephone systems in which the call recipient may be addressed by location or status. Representative claims 1, 24, and 25 are reproduced below.

1. Apparatus for establishing communications between a calling station and one or more called stations based on information stored at a called station, at least one called station comprising:
 - a. a memory storing information in a database;
 - b. a receiver for receiving a communications request including a query specifying at least one criterion for searching said database;
 - c. a comparator for comparing information stored in said database with said at least one criterion, and
 - d. a transmitter for responding to said communications request only when said information stored in said database satisfies said at least one criterion.

24. A computer program product comprising:
 - a. a memory medium, and
 - b. a computer program stored on said memory medium, said computer program including:
 - b1. instructions for sending a communications request from an originating station to other stations including a query against information stored at said other stations; and
 - b2. instructions for receiving a response from only individual stations at which information stored satisfies said query.

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25. A computer program product comprising:

- a. a memory medium, and
- b. a computer program stored on said memory medium, said computer program including instructions for establishing communications between a calling station and one or more called stations when information stored at a called station satisfies a search query sent by a calling station.

The examiner relies on the following references:

Drori et al. (Drori)	5,081,667	Jan. 14, 1992
Lemelson et al. (Lemelson)	5,731,785	Mar. 24, 1998
		(filed May 13, 1994)

Claims 1-8, 10, 12, and 19-26 stand rejected under 35 U.S.C. § 102 as being anticipated by Lemelson.

Claims 9 and 13-15 stand rejected under 35 U.S.C. § 103 as being unpatentable over Lemelson.

Claims 16-18 stand rejected under 35 U.S.C. § 103 as being unpatentable over Lemelson and Drori.

Claim 11 has been canceled.

We refer to the Final Rejection (mailed Nov. 3, 1998) and the Examiner's Answer (mailed Jul. 6, 1999) for a statement of the examiner's position and to the Brief (filed Feb. 23, 1999) for appellant's position with respect to the claims which stand rejected.

OPINION

Claims 1-8, 10, 12, and 19-26 are subject to a section 102 rejection as being anticipated by Lemelson. With respect to instant claim 1, appellant argues (Brief at 6) that "Lemelson does not disclose a database at the called station, or searching such a database, or searching such a database before responding to a communication request...."

The examiner responds (Answer at 8) by equating the "PIN code stored in memory and later utilized in a matching process" with the claimed "database." "[A]lthough Lemelson does not disclose the word 'database' per se, it is inherent if not analogous that a memory unit where an item is stored and later retrieved qualifies as a database." (Id.)

Lemelson describes (col. 4, l. 48 - col. 5, l. 6 and col. 6, ll. 7-24) using a PIN code that may be stored at remote portable unit 10 (Fig. 3). Microprocessor 12 may compare an ID code transmitted by a monitor control center 35 (Fig. 2) with an identification code stored in memory 19 (generated by a first code generator 18), and may compare an activating PIN code from the control center with a PIN stored in memory 21 (generated by a second code generator 21) or stored in ROM 13 or RAM 14. We interpret Lemelson as disclosing a single activating PIN code for the remote portable unit 10, which appears to be consistent with the examiner's reading of the reference (e.g., Answer at 9).

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Lemelson refers to a "database" which may be maintained at the central monitor station (col. 1, ll. 40-46; col. 3, ll. 17-20; col. 8, claim 2; and col. 10, claim 30). However, the examiner has not pointed out any occurrence of the reference referring to the information maintained (e.g., PIN code) at the remote portable unit as any sort of "database." We are well aware that a reference need not use the identical terminology set forth in a claim to anticipate subject matter circumscribed by the claim. However, the examiner has submitted no evidence that the artisan would have interpreted the PIN code or any other information in the receiving unit as a database. The evidence provided by Lemelson is to the contrary -- the reference refers to one organization of data as a database, but not in the called station as required by claim 1.

Thus, absent additional evidence in support of the examiner's position, we find appellant's position to be persuasive. Lemelson has not been shown to disclose a database within the remote unit. Nor does the reference support the examiner's position (Answer at 9) that the microprocessor must perform a "search" in memory to determine the location of the relevant code. We find Lemelson to disclose or suggest no more than direct access (i.e., ROM or RAM) memory for storage of the codes, and does not describe any kind of "searching" through memory in the manner alleged.

We therefore cannot sustain the rejection of claim 1. Independent claims 10 and 22 also require a database at the called station. We thus cannot sustain the section 102 rejection of claims 1-8, 10, 12, 22, and 23, as each of the claims contain or incorporate limitations we find missing from Lemelson. We also do not sustain the

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section 103 rejection of claims 9 and 13 through 15, since the claims depend from claim 1 or 10.

Instant claim 16 also requires a database at the called station. The Drori reference as applied does not remedy the deficiencies we find in Lemelson. We do not sustain the section 103 rejection of claims 16 through 18 over Lemelson and Drori.

Instant claim 19 recites the "originating station including a query for searching information stored at individual stations...." Since we are not convinced that there is any "searching" of memory at Lemelson's remote station, for the reasons set forth previously herein, we do not sustain the section 102 rejection of claims 19 through 21.

Claim 25 recites establishing communications "when information stored at a called station satisfies a search query sent by a calling station." We do not sustain the section 102 rejection of claims 25 and 26, because there has been no showing of a "search query" in the Lemelson reference.

We reach the opposite determination with respect to claim 24, however. Appellant refers us (Brief at 10) to the specification, alleging that the term "query is always used in a context which involves a search of a database." Even if true, however, that "query" may be used in a particular "context" is not dispositive. Appellant has not pointed to any special definition of the term set out in the specification.

Claim 24 recites instructions for sending a communicating station to other stations "including a query against information stored at said other stations," and instructions for receiving a response from only individual stations "at which information

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stored satisfies said query." Lemelson describes querying of the remote unit by the base; see column 3, lines 48 through 51, column 4, lines 38 through 40, and column 5, lines 3 through 6. We decline appellant's invitation to read limitations from the written description into the claim such that the claim requires a query (or a search) of a database. We sustain the section 102 rejection of claim 24 as being anticipated by Lemelson.

CONCLUSION

The rejection of claim 24 as being anticipated by Lemelson is affirmed. The rejection of claims 1-8, 10, 12, 19-23, 25, and 26 under 35 U.S.C. § 102 as being anticipated by Lemelson is reversed. The rejection of claims 9 and 13-15 under 35 U.S.C. § 103 as being unpatentable over Lemelson is reversed. The rejection of claims 16-18 under 35 U.S.C. § 103 as being unpatentable over Lemelson and Drori is reversed.

The examiner's decision to reject claims 1-10 and 12-26 is thus affirmed-in-part.

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No time period for taking any subsequent action in connection with this appeal
may be extended under 37 CFR § 1.136(a).

AFFIRMED-IN-PART


ERROL A. KRASS

Administrative Patent Judge

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JOSEPH L. DIXON

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